

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

Before the Honorable James A. Parker

Clerk's Minutes

Case Title: Ballew et al. v. Wal-Mart Stores East, L.P.

Case Number: 11-cv-749

Date: 4/23/13

Courtroom Clerk: Mallory A. Jensen

Court Reporter: John De La Rosa

Attorney(s) Present for Plaintiff:

Dick Blenden

Carl Barry Crutchfield

Attorney(s) Present for Defendant:

Charlotte Lamont

Steve Biddle

Type of Proceeding: Jury Trial

Court's Rulings/Disposition: n/a

Start Time: 9:02:06 AM

End Time: 4:47:47 PM

Total Time in Court: 5 hours, 54 minutes

Notes on the Proceedings:

9:02:06 AM: Court in session. The parties have no preliminary matters to address with the Court. The jury enters the courtroom.

9:04:49 AM: Ms. Lamont resumes cross-examining Ms. Robinson, who is already sworn.

9:45:09 AM: Ms. Lamont concludes direct examination of the witness. Mr. Blenden begins re-direct examination of Ms. Robinson.

9:52:09 AM: Mr. Blenden concludes re-direct examination of Ms. Robinson. Mr. Blenden calls Beatrice Madrid as Plaintiffs' next witness.

10:05:42 AM: Mr. Blenden concludes direct examination of the witness. Ms. Lamont begins cross-examination of the witness.

10:36:34 AM: Ms. Lamont concludes cross-examination of Ms. Robinson. Mr. Blenden begins re-direct examination of the witness.

10:37:48 AM: Mr. Blenden concludes re-direct examination of Ms. Robinson. The jury is excused for a break. Court in recess.

10:50:28 AM: Court in session. Defendant objects under Federal Rule of Evidence 615 to the presence of Dr. McKinnon in the courtroom during other witnesses' testimony. The Court orders that Dr. McKinnon remain outside the courtroom during the remaining testimony before he is a witness in the case.

10:52:34 AM: The jury enters the courtroom.

10:53:33 AM: Mr. Blenden calls Plaintiffs' next witness, Shannon Stephenson. The witness is sworn. Mr. Blenden begins direct examination of the witness.

11:06:19 AM: Mr. Blenden concludes direct examination of the witness. Ms. Lamont begins cross-examination of the witness.

11:32:08 AM: Ms. Lamont concludes cross-examination of the witness. Plaintiffs' counsel will not conduct re-direct examination. Bench conference regarding upcoming witness and Plaintiffs' counsel's plan to read Defendant's answer to interrogatory 4. The Court will allow the witness to testify, and Plaintiffs' counsel can read the interrogatory answer afterward; Defendant's counsel can clarify that the interrogatory answer was given in error, after the interrogatory answer is read to the jury.

11:38:36 AM: Mr. Crutchfield calls Plaintiffs' next witness, Janice Fite. The witness is sworn. Mr. Crutchfield begins direct examination.

11:49:45 AM: Mr. Crutchfield reads answer to interrogatory number 4 to the witness (indicating that the witness had trained Plaintiffs on two of Defendant's policies, FG 303 and FG 303a). The witness indicates that the part of the interrogatory and responsibility for the policy training as it pertains to her is not correct.

11:52:55 AM: Mr. Crutchfield concludes direct examination of the witness. Mr. Biddle begins cross examination of the witness.

11:57:14 AM: Mr. Biddle concludes cross-examination of the witness. Mr. Crutchfield begins re-direct examination.

11:58:31 AM: Mr. Crutchfield concludes re-direct examination. Mr. Biddle begins re-cross examination of the witness.

11:59:25 AM: Mr. Biddle concludes re-cross examination of the witness. The witness is excused. Mr. Blenden calls Bobby Smith as Plaintiffs' next witness.

12:01:08 PM: The witness is sworn. Mr. Blenden begins direct examination of the witness.

12:04:24 PM: Mr. Blenden concludes direct examination of the witness. Ms. Lamont begins cross-examination of the witness.

12:06:30 PM: Ms. Lamont finishes cross-examination. The witness is excused. The jury is excused for lunch. The Court reviews with counsel the planned order of witnesses to be presented after lunch.

12:08:20 PM: Court in recess

1:25:05 PM: Court in session. The jury enters the courtroom.

1:26:21 PM: Mr. Crutchfield calls Mindy Hines as Plaintiffs' next witness. The witness is sworn. Mr. Crutchfield begins direct examination of the witness.

1:42:46 PM: Mr. Crutchfield concludes direct examination of Ms. Hines. Mr. Biddle begins direct examination of the witness.

1:50:43 PM: Mr. Biddle concludes cross-examination of Ms. Hines. Mr. Crutchfield conducts re-direct examination of the witness.

1:55:31 PM: Mr. Crutchfield concludes re-direct examination of the witness. Mr. Crutchfield calls Carrie Jared as Plaintiffs' next witness. Mr. Crutchfield begins direct examination of Ms. Jared, who is a representative of Wal-Mart and the market manager for Wal-Mart based out of Albuquerque (overseeing 10 stores).

1:59:06 PM: Bench conference regarding a line of questioning by Mr. Crutchfield.

2:02:45 PM: Mr. Crutchfield continues his direct examination.

2:20:35 PM: Mr. Crutchfield concludes direct examination of the witness. Ms. Lamont begins cross examination (which will also include direct examination, since Ms. Jared is Defendant's witness/corporate representative).

2:43:49 PM: Ms. Lamont concludes cross/direct examination. Mr. Crutchfield begins re-direct examination of the witness.

2:53:42 PM: Mr. Crutchfield concludes re-direct examination of the witness. Ms. Lamont conducts a brief re-direct examination.

2:56:49 PM: The jury is excused for break. Court in recess.

3:09:57 PM: Court in session. The jury enters the courtroom. Mr. Blenden calls Thomas McKinnon as Plaintiffs' next witness. The witness is sworn. Mr. Blenden begins direct

examination of the witness.

3:31:32 PM: Mr. McKinnon uses the easel to write up sums from his report. Bench conference regarding what sums by Dr. McKinnon to use (earlier-provided ones or new ones).

3:36:43 PM: Mr. Blenden resumes direct examination of Dr. McKinnon.

3:43:56 PM: The Court asks the witness what discount rate the witness used in his calculations.

3:48:22 PM: Mr. Blenden concludes direct examination of the witness. Mr. Biddle begins cross-examination of the witness.

4:20:43 PM: Mr. Biddle concludes cross-examination of the witness. Mr. Blenden begins re-direct examination of the witness.

4:23:38 PM: Plaintiffs rest their case-in-chief.

4:26:45 PM: The jury is excused for the evening. Court in recess.

4:35:44 PM: Court in session. Ms. Lamont moves for judgment as a matter of law under Federal Rule of Civil Procedure 50, on the basis of Plaintiffs' at will status and the contention by Defendant that Defendant followed its "coaching for improvement" policy even if it had been required to do so, which Defendant contends it was not required to do.

4:38:13 PM: Mr. Crutchfield responds to Defendant's Rule 50 motion.

4:40:11 PM: The Court rules that there has been sufficient evidence presented for jury to find that there was an implied contract for each plaintiff, and a reasonable expectation under that contract that progressive discipline would be applied. Defendant's Rule 50 motion is denied.

4:43:57 PM: The Court discusses the drafted jury instructions with counsel. Counsel should work together to revise part of one of the damages instructions. If the parties wish to submit any other jury instructions they should do so in the morning.

4:47:47 PM: Court in recess